

## State of Idaho

## DEPARTMENT OF HEALTH AND WELFARE

Division of Medicaid

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### **INFORMATIONAL LETTER #2002-2**

DATE:

February 11, 2002

TO:

ALL SKILLED NURSING FACILITIES

ALL INTERMEDIATE CARE FACILITIES FOR PERSONS WITH

DEVELOPMENTAL DISABILITIES

FROM:

DEBBY RANSOM, R.N., R.H I.T., Chief

Bureau of Facility Standards

**SUBJECT:** 

SECTION 66-405, IDAHO CODE, REGARDING TREATMENT AND CARE

OF RESIDENTS WITH DEVELOPMENTAL DISABILITIES

Skilled Nursing Facilities and Intermediate Care Facilities for Persons with Developmental Disabilities may not be aware of Idaho law that addresses the treatment and care of residents with developmental disabilities. The purpose of this letter is to give facilities the information they need to maintain compliance with Idaho Code A guardian or physician may *not* authorize a "No CPR" status for a resident with developmental disabilities unless the conditions of this Idaho law are met Enclosed is a copy of the law 66-405. Items (7) and (8) specifically apply to this situation. Facilities who have residents with developmental disabilities who are "No Code" status should take this opportunity to carefully review the law and the circumstances of the resident(s) in question.

In Skilled Nursing Facilities, violations of this Idaho law will be cited at federal F156 §483.10(b)(8), which states:

The facility must comply with the requirements specified in subpart I of part 489 of this chapter relating to maintaining written policies and procedures regarding advance directives. These requirements include provisions to inform and provide written information to all adult residents concerning the right to accept or refuse medical or surgical treatment and, at the individual's option, formulate an

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advance directive. This includes a written description of the facility's policies to implement advance directives and *applicable State law*. (emphasis added)

In Intermediate Care Facilities for Persons with Developmental Disabilities, violations of this Idaho law will be cited at federal W125 §483.420(a)(3), which states:

Allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints, and the right to due process.

Should you have any questions, please contact Loretta Todd or Diana Gassel, Supervisors, Long Term Care, or Sylvia Creswell, Supervisor of Non-Long Term Care at 208/334-6626, or you may wish to consult your facility's legal counsel.

DEBBY RANSOM, R.N., R.H.I.T., Chief

Bureau of Facility Standards

DR/nah Enclosure

cc: Idaho Health Care Association

Idaho Association of Community Options and Resources



# Idaho Statutes

### TITLE 66 STATE CHARITABLE INSTITUTIONS CHAPTER 4

TREATMENT AND CARE OF THE DEVELOPMENTALLY DISABLED

66-405. ORDER IN PROTECTIVE PROCEEDINGS. (1) If it is determined that the respondent is not developmentally disabled but appears in need of protective services, the court may cause the proceeding to be expanded or altered for consideration under the uniform probate code.

(2) If it is determined that the respondent is able to manage financial resources and meet essential requirements for physical health or safety, the

court shall dismiss the petition.

- (3) If it is determined that the respondent is developmentally disabled and is unable to manage some financial resources or meet some essential requirements for physical health or safety, the court may appoint a partial guardian and/or partial conservator on behalf of the respondent. An order establishing partial guardianship or partial conservatorship shall define the powers and duties of the partial guardian or partial conservator so as to permit the respondent to meet essential requirements for physical health or safety and to manage financial resources commensurate with his ability to do so, and shall specify all legal restrictions to which he is subject. A person for whom a partial guardianship or partial conservatorship has been appointed under this chapter retains all legal and civil rights except those which have by court order been limited or which have been specifically granted to the partial guardian or partial conservator by the court
- (4) If it is determined that the respondent is developmentally disabled and is unable to manage financial resources or meet essential requirements for physical health or safety even with the appointment of a partial guardian or partial conservator, the court may appoint a total guardian and/or total conservator.
- (5) In the event that more than one (1) person seeks to be appointed guardian and/or conservator, the court shall appoint the person or persons most capable of serving on behalf of the respondent; the court shall not customarily or ordinarily appoint the department or any other organization or individual, public or private, that is or is likely to be providing services to the respondent.
- (6) Subject to the limitations of the provisions of subsection (7) of this section, guardians or conservators may have any of the duties and powers as provided in sections 15-5-312(a)(1) through (4), 15-5-424 and 15-5-425, Idaho Code, and as specified in the order. Any order appointing a partial or total guardian or partial or total conservator under the provisions of this section must require a report to the court at least annually. In addition to such other requirements imposed by law or order, the report shall include
  - (a) A description of the respondent's current mental, physical and social condition;
  - (b) The respondent's present address and living arrangement;
  - (c) A description of any significant changes in the capacity of the respondent to meet essential requirements for physical health or safety or to manage financial resources;
  - (d) A description of services being provided the respondent;
  - (e) A description of significant actions taken by the guardian or conservator during the reporting period;
  - (f) Any significant problems relating to the guardianship or conservatorship;
  - (g) A complete financial statement of the financial resources under the control or supervision of the guardian or conservator; and
  - (h) A description of the need for continued guardianship or conservatorship services.
  - (7) No guardian appointed under this chapter shall have the authority to

refuse or withhold consent for medically necessary treatment when the effect of withholding such treatment would seriously endanger the life or health and well-being of the person with a developmental disability. To withhold or attempt to withhold such treatment shall constitute neglect of the person and be cause for removal of the guardian. No physician or caregiver shall withhold or withdraw such treatment for a respondent whose condition is not terminal or whose death is not imminent. If the physician or caregiver cannot obtain valid consent for medically necessary treatment from the guardian, he shall provide the medically necessary treatment as authorized by section 39-4303(c), Idaho Code.

- (8) A guardian appointed under this chapter may consent to withholding or withdrawal of artificial life-sustaining procedures, only if the respondent
  - (a) Has an incurable injury, disease, illness or condition, certified by the respondent's attending physician and at least one (1) other physician to be terminal such that the application of artificial life-sustaining procedures would not result in the possibility of saving or significantly prolonging the life of the respondent, and would only serve to prolong the moment of the respondent's death for a period of hours, days or weeks, and where both physicians certify that death is imminent, whether or not the life-sustaining procedures are used; or
  - (b) Has been diagnosed by the respondent's attending physician and at least one (1) other physician as being in a persistent vegetative state which is irreversible and from which the respondent will never regain consciousness.
- (9) Any person, who has information that medically necessary treatment of a respondent has been withheld or withdrawn, may report such information to adult protective services or to the Idaho protection and advocacy system for people with developmental disabilities, who shall have the authority to investigate the report and in appropriate cases to seek a court order to ensure that medically necessary treatment is provided

If adult protective services or the protection and advocacy system determines that withholding of medical treatment violates the provisions of this section, they may petition the court for an ex parte order to provide or continue the medical treatment in question. If the court finds, based on affidavits or other evidence, that there is probable cause to believe that the withholding of medical treatment in a particular case violates the provisions of this section, and that the life or health of the patient is endangered thereby, the court shall issue an ex parte order to continue or to provide the treatment until such time as the court can hear evidence from the parties involved. Petitions for court orders under this section shall be expedited by the courts and heard as soon as possible. No bond shall be required of a petitioner under this section.

- (10) No partial or total guardian or partial or total conservator appointed under the provisions of this section may without specific approval of the court in a proceeding separate from that in which such guardian or conservator was appointed
  - (a) Consent to medical or surgical treatment the effect of which permanently prohibits the conception of children by the respondent unless the treatment or procedures are necessary to protect the physical health of the respondent and would be prescribed for a person who is not developmentally disabled;
  - (b) Consent to experimental surgery, procedures or medications; or
  - (c) Delegate the powers granted by the order.

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